

CREDIBILITY OF LEGALIZATION: ILLEGALLY CONSTRUCTED BUILDINGS IN SERBIA

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The paper analyses the credibility of the legalization policies regarding illegally constructed buildings (ICBs) in Serbia in the socialist and post-socialist periods. It introduces the conceptual framework of the credibility thesis concerning informal institutions in an empirical examination of the credibility of legalization policy measures in Serbia. The analysis identifies the main causes of vast illegal construction, and the types and credibility of planning measures and legalization policies, using the Credibility thesis as a breakthrough in planning practice. The findings show the failure of planning and the non-credibility of legalization policies, as well as the survival of ICBs as an autonomous form of property rights.

Key words: legalization policy, illegally constructed buildings, credibility thesis, housing, property rights.

INTRODUCTION

One of the greatest urban and spatial development challenges in South-East Europe (SEE) has been widespread informal and illegal construction (Vienna Declaration, 2004; UN-Habitat, 2015a, 2015b; UNECE, 2017). It is estimated that nearly 50% of the buildings in SEE were built illegally (Gabriel, 2007; Manzotti, 2009). The so-called “spontaneous and unplanned construction” (as the co-existence of the “informal” and “illegal”) has been a challenge and research agenda in Serbia since the 1950s. In Serbia, according to official data, the number of illegally constructed buildings (ICBs) was 2.05 million or 43.4% of the total number of buildings in 2017 (MGSJ, 2017). This shows that many buildings do not have legal validity. *Ex-post* legalization is a way to ensure the legal validity of ICBs in Serbia.

The terms “illegal” and “informal” have a tripartite character: illegality, semi-illegality, and semi-legality or extra-legality. Although there are substantial differences, as well as partial overlaps between them, there is no global consensus on the terms “illegal” and “informal”. The difference between *legal* and *illegal* is not as great as the proponents of legalization assume (Varley, 2002). Illegal and informal construction are defined differently. The global understanding of *illegal* construction covers activities “contrary to or forbidden

by law” (Oxford English Dictionary, 2017); it is an activity without a legal permit or “not according to or authorized by law” and “contrary to or in violation of a law” (Merriam-Webster, 2017). It can also be described as “construction without previously acquired urban planning and building licences” (Petovar, 2003), as well as illegal activity or matter that lacks legal authority, but which is tolerated by the state. In our interpretation, illegal construction is unauthorized activity contrary to the law and planning regulations, but without statutory sanctions.

De Biase and Losco (2017) have identified necessary illegal construction, which is related to meeting housing needs due to individual economic difficulties, and speculative illegal construction, which involves investments in real estate for profit, not infrequently money laundering or tax evasion. The term “illegally constructed building” (ICB) is defined in Serbia by the Planning and Construction Act (Službeni glasnik RS, 2009) and the legalization laws (Službeni glasnik RS, 2013a; 2013b; 2015a; 2015b; 2018; 2020). Since the beginning of the transition process in the 1990s, most ICBs have been the result of speculative investment, specifically in the construction of residential and office buildings for the market. There are indications that investors in ICBs intended for sale on the informal market are sometimes involved in illegal activities. Some investments in ICBs were intensified by various developers during the wars in the 1990s (Milić *et al.*, 2004). Grubovic (2006) argued that in Serbia “illegal building in the post-communist period was

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led by the elite, and the existing middle class". The poorest strata of society built about 18% of ICBs (Petovar, 2003). Speculative construction of ICBs through various developers includes almost exclusively the sale of buildings. There is no publicly available data on the number of ICBs resulting from speculative investment. According to the assessment of the Republic Geodesic Authority of Serbia, there are around five million ICBs (Avakumović, 2018).

The *informal* construction issue is regulated by both national and international documents, such as the Vienna Declaration (2004). It is identified as "the absence of required forms or procedures or relaxation of prescribed rules" (Merriam-Webster, 2017). Differences in how the terms "informal construction" and "illegal construction" are understood have been overcome in the paper by their sublimation into the compound "illegal and informal construction" (IIC). Both terms (ICB and IIC) represent specific forms of spatial coexistence and some kind of legal juxtaposition, i.e. the coexistence of informality and formality. In other words, illegal and informal construction, i.e. ICBs, often coexist with legally constructed buildings in the same area, which means a long-term "legal juxtaposition".

This paper explores the experience of Serbia. At least 1 million households, or over 40% of the population of Serbia, live in 975,822 residential ICBs (MGSI, 2017). ICBs are tacitly tolerated in Serbia, because that process has gone beyond the law or has occurred because of the lack of laws, or due to legal dissonance or inconsistencies, ambiguities, and contradictions in the institutional systems (Lazic and Cvejic, 2007). It is assumed that the state has tolerated the massive growth of ICB due to various institutional weaknesses, insufficient state and institutional capacities, the state's systemic inability to establish an affordable framework for meeting housing demands, a low-income population, and the lack of financial and appropriate instruments to prevent and solve this issue. ICBs are the result of an attempt to meet basic housing needs due to a combination of inconsistent institutional and planning frameworks, a legal vacuum, and spontaneous urban expansion. It seems that at the heart of the phenomenon of ICBs lies real estate speculation and a systemic inability to respond to the need for affordable housing.

The research deals with the basic causes that have enabled mass illegal construction in Serbia, the role of the socialist and post-socialist frames for institutional credibility, and legalization policies. The focus on institutions is the basis for getting to the core of the problem, given that it highlights the dualism of the national institutional frame in the emergence of ICBs and the creation of a legalization policy. The analysis of institutional changes in relation to ICBs and the credibility of legalization policies in Serbia includes a comparison between the postulates of the neoclassical approach and the "credibility thesis of informality", as well as the assessment of the credibility of legalization policy measures within the socialist and post-socialist contexts.

The paper aims to deepen the understanding of the coherence between institutional frameworks and the causes of IIC, and the legalization policies and their credibility in the analysed contexts. It is structured as follows:

- a short survey of the theoretical background and adopted methodology for analysing ICBs and their credibility;
- an analysis of ICBs in socialist and post-socialist contexts in Serbia; and
- the credibility of legalization policies in both periods.

THEORETICAL BACKGROUND

The analysis of IIC in Serbia from the standpoint of the institutional frame and comprehensive development context can be based on two opposing theoretical frames: the neoclassical approach, and the heterodox approach. This analysis includes some explanations of institutional theory and the credibility theory, related to the informal institutions. *Institutional theory* is a collection of concepts describing the state, market, social, and political contexts of institutional functioning inside a society, and individual behaviour based on the postulates of neoclassical thought. Some proponents of the new institutionalism have argued that the analysis of behaviour and rational choice is characterized by contextualism, reductionism, functionalism and instrumentalism (March and Olsen, 1984). Institutions introduce the rules of social behaviour through formal laws and informal limitations (North, 1990), or they make a group of rules that are shaped endogenously by the actors involved (Ho, 2016). Informal institutions have common social rules, which are usually unwritten, designed, and enforced outside official channels (Helmke and Levitsky, 2004), with possible interaction with formal institutions (complementary, substitutive, or conflicting). Informal and formal institutions are mechanisms for guaranteeing property rights (Williamson, 2011). The institutional frame depends on the actors' level of power according to their own interests. Politically influential interest groups are most frequently the drivers of illegal construction, and the creators of new rules in formal and informal institutions.

Informal rules arise from spontaneous internal changes; they are not part of the formal and protected legal system and remain in the private sphere. Formal institutions include rules for behavioural restrictions that protect against various forms of predation, such as *public predation* (expropriation of land by government officials) and *private predation* (expropriation by private individuals of another's private property). Protection mechanisms protect individuals and property rights from the state (through constitutional restrictions) and from private predation (through the court system, contracts and state ownership of land), while the protection of informal property rights relies on private attitudes, beliefs, customs, norms and traditions (Williamson and Kerekes, 2011).

From a constitutional perspective, the credibility and functions of state institutions are of key importance for the enforcement of property rights, i.e. the rules of the game. The demarcation of private property requires institutional restrictions that prevent public predation, i.e. that prevent the state from intervening in the (re)allocation of property rights for the private benefit of one party at the expense of another. A transitional political economy has implications for development, particularly in limiting state discretion in

transferring resources from one side to another. The state capacity implies the institutional capacity to limit predation, while its inadequacy is the consequence of the absence of rules that *ex-ante* limit state predation (Boettke and Candela, 2019). The solution to the problem of public predation lies in developing arrangements (exchanges, settlements, bargains, agreements, contracts) and establishing rules that limit political discretion and prevent the degeneration of state capacity into a means of predation (Vahabi, 2016).

The state capacity arises from the institutional context in which it is constitutionally constrained to violate rules that limit discretion. The transition of the socialist state towards a market economy ensured the redistribution of property rights through discretionary power, which facilitated the rapacity of state capacities. According to the theory of state capacity, the state should ensure property rights, enforce contracts, and protect public goods to prevent predation. State capacity is defined as the strength of the causal relationship between the adopted policies and their intended effects (Lindvall and Teorell, 2017). Explanations of the conditions under which the state becomes a tool for limiting or enabling predation are offered by the literature examining the evolution of institutional constraints that inhibit public predation (North, 1991; Barzel, 2000; Salter, 2015; Leeson, 2014). These approaches are interconnected from the point of view of public choice theory (Boettke and Candela, 2019; Piano, 2019), and they reflect on property rights, especially in transitional societies.

In the discussion about property and property rights, certain differences can be observed. Wilson (2020; 2022) established an innovative theory of property, arguing that intelligent human action explains property, and that, as a customary right, it is a historical process of a choice of actions conditioned by context. The formal explanation of property has been socially acquired from the past and serves to give form to current action and further goals. Therefore, his approach implies that property is based on customs and not on rights (the priority of property over property rights), meaning that property rights are subordinate to property. The theory is based mainly on the idea of private ownership and property as a social construct; however, even with the omission of a property rights policy, property rights are always a political issue. In contrast, Murtazashvili (2022) believes that property is based on ideas that affect property rights (as well as rules of limitation), which are socially constructed. Therefore, the concept of property and property rights as social constructs allows for a better explanation of evolutionary changes in institutions, which is what credibility theory relies on (Ho, 2014). The focus on informal institutions and property enables the understanding of property rights and connects them with insights into *heterodox* traditions in economics (Hodgson, 2015; Bromley, 2009).

During the last century, there has been a shift in thinking in neoclassical and heterodox teachings related to the role of informal institutions, especially regarding tenure security and the legal status of property rights. There has been a move away from the conventional neoclassical approach that supports titling and the security of property rights. In the neoliberal discourse, it is important to establish strict

property rights, titling, and institutions that encourage “good governance”. The creators of policies indicate that titling improves the chances for economic development, and that secure property rights lead to economic development (Murtazashvili and Murtazashvili, 2015; Williamson, 2011). Contrarily, Bromley (2009) considers that the formalization of ownership relationships through land registration represents an element of the political guidelines that are imposed on poorer countries. Titling is a long-term, evolutionary process in which the state is an actor that constantly pressures and negotiates about institutional limits. Ho (2017) points to the existence of several types of titling, such as total, partial, voluntary, or completely without titling, as well as to the effects of formalization (total formalization of all property rights, chosen property rights, desired property rights). Formalization corresponds to assigning a legal or formal status, making something official, while legalization refers to giving legal validity (Iban, 2020).

The legalization policy can be considered as a way to achieve goal 11 of the Sustainable Development Goals/SDG, the 2030 Agenda (UN, 2015) related to ensuring access to safe and affordable housing and basic services and upgrading slums. In neoliberal postulates, consequently, Goal 11 of SDG prefers the concept of formal property rights and formal land-use. The credibility theory challenges this preference by arguing and proving that informal institutions (including non-codified property rights) are often labelled as “second best” compared to codified property rights (Ho, 2020).

The neoliberal framework is based on the postulates of neoclassical thought: external design of the framework and changes, the equilibrium of institutional changes, and imperative forms of institutional development (formalization/titling, security of property rights).

Heterodox approaches are centred on institutions, social connections and structures (Davis, 2006). Heterodox theories criticize the neoclassical model of individual behaviour in decision-making and market equilibrium, given that the principle of efficiency cannot be an equivalent for the social optimization of behaviour and decision-making. Some researchers argue that it is more significant what the institutions do (*function*) rather than their appearance (*form*) (Gabel, 2000; Chang, 2007; Davy, 2018), emphasizing the degrees of (in)formality and credibility.

The credibility theory, selected for the analysis of mass IIC, considers the specifics of Serbia and deals with the contemporary literature related to informal institutions and property rights. Accordingly, the focus of the theoretical part is to highlight the “credibility approach” that emphasizes the role of the “endogenous” social context, contrary to the standard neoclassical approach.

According to the *credibility theory* institutions are considered as systems of established and embedded social rules that structure social interactions (Hodgson, 2006). The credibility thesis is also compatible with the concept of the evolutionary and transformative nature of institutions and their path-dependent development (Liebowitz and Margolis, 1999; Dollimore and Hodgson, 2014). *The credibility thesis* is rooted in the opposition to the neoclassical approach and it sets different postulates

(Ho, 2016): institutional changes result from endogenous growth, spontaneity, and self-organization; the existence of dynamic disequilibrium in institutional changes; and institutional function goes beyond the institutional form. Likewise, this thesis implies that institutional evolution has a conflicting character, and informal institutions emerge as a catalyst for social behaviour, as well as economic, political, and cultural interests. The thesis moots that institutional form follows function, namely the importance of function instead of its form. This position stems from the observation that institutions arise from endogenous interaction.

The credibility thesis implies the survival of credible institutions by changing their form and/or by their adaptation, as well as by creating new institutions. Credibility is defined as the functionality of institutions, including endogenous and non-deliberate interaction between actors directed towards a goal. The credibility thesis on institutions can be determined by assessing their credibility level (e.g., by analysing the relationship between state interventions through the Credibility Scales and Intervention/CSI checklist and FAT framework), and by examining policy solutions that correlate to the existing credibility (Ho, 2014). For examining the origin, evolution and function of informal property rights in different contexts, especially in developing countries, the credibility theory is suitable. It involves a preliminary examination of the function of existing property rights before considering the institutional form (formal and informal).

Credibility thesis can point to the desired direction of the legalization policy, procedures and policy implementation mechanisms, and to new perspectives for improving its current performance. Institutional credibility includes the credibility of property rights within the Formal, Actual and Targeted/FAT frame, which contains formally established rights, actual property rights in practice, and targeted property rights, i.e. legal status (*de jure*), actual (*de facto*) and desired status (*optatus*). The FAT framework enables the analysis and dynamics of institutions and their changes over time. It respects the structural relations between formal and informal property rights, while depending on the goals and contextual conditions. Informal property rights cannot be considered as inferior. On the contrary, we previously emphasized the “juxtaposition” of ICBs. *Optatus* (Latin, also *optatum* as wished for, desired, chosen), as the targeted status of property rights, reflects the social goal, and how and to which extent we want to formalize informal rights (e.g. degree, scope, type of informal facilities). The FAT framework implies a social consensus around the goal of formalizing existing informal property rights, i.e. changing informal institutions into formal ones.

The policy options based on institutional credibility involve the implementation of the CSI checklist (Ho, 2016). The CSI checklist provides an overview of the existing levels of credibility that can be linked across a wide spectrum with public policies (from intervention to non-intervention). Therefore, the CSI checklist helps policy-makers to incorporate various possibilities and constraints. The measures cover a broad spectrum such as: by order; prohibition; facilitation; co-opting (formalization); and condonation, or acceptance of current practices. The type of institutional intervention, its

desired effects and the credibility scale set in the CSI checklist represent a matrix for the examination of the legalization policy measures of ICBs in Serbia.

In achieving secure property rights, the role of informal institutions inherent in a certain society may be more imperative than previously believed. Therefore, the role of the state in regulating property and property rights through the framework of legal pluralism is a particularly significant approach. This innovative approach was first applied in the institutional analysis and exposure of the degree of legal pluralism regarding land rights in China. However, the similarities and differences between the cases of China and Serbia are not explored.

RESEARCH METHODOLOGY

This paper analyses the emergence of mass ICBs in Serbia by mixing a few approaches in the decomposition of the socialist and post-socialist frames. The analysis relies on a mix of conventional and new theoretical approaches, based on a consistent theoretical platform and compatible analytical tools, creating a composite frame that connects institutional, socio-political and urban dimensions in both analytical contexts.

The empirical analysis of ICBs combines some elements of the credibility thesis, offering an explanation of the development of (non)standard practices and institutional deviations related to them. The focus of the analysis is the opening of the “black box” of institutional (non) functioning from the stand-point of its credibility. The aim is understanding the social relations and behaviours that govern decision-making regarding ICBs. Therefore, this paper tries to shed light upon the contribution of key actors to the exponential growth of ICBs in the given contexts.

The causes and credibility of ICBs and legalization policy measures in socialist and post-socialist contexts are examined by a qualitative *ex-post* analysis. Our approach to the credibility of the legalization policy for ICBs in Serbia includes application of the CSI checklist (Ho, 2016) as follows: a) in the identification and data analysis on previous and existing legalization policy measures against ICBs (including the general urban plans of Belgrade and Novi Sad); b) in typologizing and structuring of legalization policy measures in both of the given periods; c) in the preliminary evaluation of the measures’ credibility; and d) in interpreting empirical findings.

This research is based on publicly available data, legislation, strategic documents and other sources. The main data are based on the first primary database of ICBs (MGSI, 2017), which contains only the number and category of ICBs. The database does not contain data on the structure and typology of ICBs, i.e. any specification of the types of building interventions. ICBs could be new constructions, buildings that have undergone a change of purpose, overbuilding, auxiliary and ancillary facilities. Some primary data were taken from the Census of Population, Households and Dwellings (Popis stanovništva, domaćinstava i stanova u Republici Srbiji 2011, 2011; Popis stanovništva, domaćinstava i stanova u Republici Srbiji 2022, 2022). Data from secondary sources were also used: several legalization laws, regulations, public

policy documents, and related research articles. We also analysed some data on legalization policy measures from the general urban plans of Belgrade (Službeni list Grada Beograda, 2003a; 2016) and Novi Sad (Službeni list Grada Novog Sada, 2006). According to available data, so far, there have been neither systematic evaluations of ICBs nor any assessment of the credibility of the legalization policies in Serbia. Our analysis is perhaps the first comprehensive research that explores the coherence between the causes of ICBs, the institutional frameworks, and the credibility of Serbian legalization policies.

RESULTS AND DISCUSSION ON THE LEGALIZATION OF ILLEGALLY-CONSTRUCTED BUILDINGS IN SERBIA

The key causes of the process of endogenous, spontaneous, and uncontrollable illegal construction in Serbia in both periods analysed are as follows (Zeković *et al.*, 2020): inefficiency of the institutional frame in providing affordable housing and non-compliance with the laws; huge migratory pressure in urban areas encouraged by economic development from the 1950s to the 1990s; immigration because of the disintegration of the SFRY and the wars from 1991 to 1999; rapid growth of urbanization (from 28.3% to 59.4% from 1953 to 2011); weaknesses of the legal framework; inadequate urban planning and lack of plans; a very limited supply of communally-equipped construction land for individual building; a ban on private initiatives building commercial apartments (in socialism); low purchasing power; weak implementation of plans and policies.

Socialist Period

The socialist period (1945-1990) in Serbia started with the phase of an administrative-centralist system based on a communist paradigm (1945-1950), and the phase of self-governance (1950-1990). The socialist system in the former Yugoslavia up to 1950 was founded on state ownership with the marginalization of private property, which remained only in rural and suburban areas. The state's takeover of urban land and other properties in private ownership was accomplished with federal acts that fostered nationalization, confiscation and expropriation (Službeni list FNRJ, 1947; 1948; 1949). Construction land passed into state-ownership by law (Službeni list FNRJ, 1958), and it was under complete state control. After the Act on Determining Construction Land in Cities and Urban Settlements was passed (Službeni list SFRJ, 1968), land became socially-owned and remained so until 2006 (until the adoption of the existing constitution of the Republic of Serbia). The owners of construction land became its users, and the right of access could only be inherited. Given that construction land could not be marketed, it stopped the legal transfer on the real estate market.

Until the 1990s, spatial and urban plans were not implemented because of their rigidity, as well as because of a disrespect for the relevant laws. Industrialization and urban-centric development triggered migration towards larger cities. From 1953 to 1991, according to Census' the urban population as a share of the total population of Serbia increased from 28.3% to 53.8% (Popis stanovništva,

domaćinstava i stanova u Republici Srbiji 2011, 2011). Housing policy in that period was characterized by socialist values and postulates prescribed by legislation on the level of the Yugoslav republics, i.e. dominant state control in the housing construction in urban areas. The Housing Relations Act (Službeni glasnik SR Srbije, 1973) was based on tenure rights in social ownership. The Constitution of the SFRY (Službeni list SFRJ, 1974) provided all employees with the right to obtain a socially-owned apartment for their use; however, because of the inability of the state to provide financial resources, only half of them were able to obtain one. Other modalities for meeting the housing need, such as cooperative residential construction, crediting private construction, and subsidizing the leasing of private apartments, were not determined by laws. This resulted in citizens opting for illegal construction as a parallel system of housing provision, and it became a widespread phenomenon in socialist Yugoslavia (Živković, 1981). Although there are no reliable data regarding the number, structure and type of ICBs in Serbia during this period, some estimations indicated that the ICBs made up around 33% of the total buildings up to 1980 (Milić *et al.*, 2004). They were concentrated mainly in the large cities, on the outskirts of cities, and in attractive urban zones, suburbs and rural settlements close to cities, by converting agricultural land into pseudo-urban plots, as well as along major roads. Research involving 32 cities in Serbia, including Belgrade, determined that 20% of the flats were illegal (Petovar, 1992). The total number of ICBs in Belgrade from 1975 to 2017 increased from 30,527 to 266,665 (Žegarac, 1999; MGSI, 2017).

The key driving force was the accommodation of a large number of refugees and internally displaced persons who came from Croatia, Bosnia and Herzegovina, and Kosovo. Due to a large inflow of immigrants, urban sprawl continued through ICBs. Informal settlements were a key form of urban sprawl in Belgrade (Zeković *et al.*, 2015), covering 22% of the construction land and taking up about 40% of the residential areas (Službeni list Grada Beograda, 2003a; 2003b). Almost half of housing properties in Belgrade were built in an "informal way", or illegally (Manzotti, 2009). The intensive growth of ICBs was caused by the legal frame of property rights, such as: social ownership over construction land, social/collective housing construction, the low share of legally constructed individual houses, limitations in the construction of privately-owned apartments, the absence of private housing construction for the market, and a lack of legal transfer of construction land. Limitations of the legal framework on property rights, the absence of market mechanisms in housing and land policy, a lack of financial resources to meet the housing demands, and a lack of plans have all contributed to the intensification of ICBs. This illustrates that the intensive illegal construction was a consequence of the credibility gap between systemically declared and institutionally established frames.

To summarize: due to a deficit in affordable housing and construction land, the legal impossibility of acquiring socially-owned land for the construction of private houses, and weak control mechanisms, ICBs became a credible option for the housing deficit despite their lack of legitimacy, but with informal support for them in practice. The systemic

options and the confrontation of housing and urban policies supported the processes of co-evolution, co-existence and self-organization, in spite of formal institutional frames. This allowed an explosion of ICBs. The restrictive urban policy and the impossibility of the socialist model to provide affordable housing led to ICBs becoming an alternative way of meeting the housing demand. It was a consequence of the constitutional monopoly of social and state ownership over construction land in the cities, as well as a discrepancy between normative dissonance, non-credible policies, and social needs. ICBs became a “credible” social mechanism, although they remained outside the institutional, fiscal, and planning systems. This caused an unsustainable situation with nearly a half of all the buildings outside the legal system.

Post-socialist Period

In this paper we consider that the post-socialist period began in 1990 with the passing of the laws on the privatization of social and state-owned enterprises (1990), the privatization of housing stock (1990), a “package of laws” on construction land, planning and construction (1995), and with the introduction of a multi-party political system into a socialist state. Part of the public believes that the post-socialist period emerged after the democratic “revolution” in 2000, when fundamental social, institutional, economic and other transitions were introduced into the socialist system, of which some are still ongoing.

According to the Census of population, households and dwellings in the Republic of Serbia 2011 (Popis stanovništva, domaćinstava i stanova u Republici Srbiji 2011, 2011) in Serbia there were 3.23 million dwellings, or 437,283 more than in 1991 (Table 1), located in 2,246,320 buildings. In terms of the structure of these buildings, houses dominated (97.3%), with 2.7% multi-storey residential buildings (Jovanović Popović *et al.*, 2013). According to Census of population, households and dwellings in the Republic of Serbia 2022 (Popis stanovništva, domaćinstava i stanova u Republici Srbiji 2022, 2022), there were 500,000 fewer inhabitants and 396,244 more apartments than in 2011. The average annual number of constructed dwellings from 2011 to 2022 was between 9,815 and 25,326 units (SORS,

2022), indicating that at least 150,000 dwellings are ICBs.

In the post-socialist period, despite the decrease in the total population, the stagnation of the urban population and a huge immigration wave (1990s up to 0.8 million, now 0.4 million), there has been an increase in the number of private dwellings (136.8%), with intensive urban sprawl caused by the extreme growth of ICBs of 200% (Table 1). During this period, there has been an evident paradox: strong growth of dwellings and ICBs were simultaneous with Serbia's negative economic growth -6.3% from 1991 to 2000, or positive economic growth average of 3.1% from 2001 to 2019 (SORS, 2021). There are some significant factors for the survival of ICBs, viz.: the impact of economic recession, a lack of affordable housing policies, the price of dwellings, unfavourable housing credit and loan instruments, an ever-increasing number of households unable to repay their mortgages, the stagnating purchasing power of a large majority of households, a lack of equipped urban land, a growing amount of dilapidated housing stock, and market mechanisms and corruption that have led to large-scale illegal construction.

According to the national strategic document (MGSI, 2020), since 2012 an average of 11,747 apartments have been built per year (excluding houses for which there is no data). Also, housing leases in the private sector have not been regulated, so neither tenants nor landlords have any legal certainty. Resolving housing needs by taking out housing loans is still inaccessible to the majority of the population due to low average incomes in Serbia, thus compelling people to build ICBs. There are no housing support mechanisms for middle- and lower-income households, and for the poorest households. Subsidizing and insuring housing loans have been the most important measure of public intervention since 2005, through the National corporation for the insurance of housing loans. The largest part of the funds was apportioned for subsidizing housing loans for households with higher incomes.

The contradictions of illegal construction have multiplied since the 1990s. The introduction of private property on construction land by the Constitution of Serbia (Službeni

Table 1. Total inhabitants, dwellings, and residential buildings in Serbia (1991-2022)

(Source: Popis stanovništva, domaćinstava i stanova u Republici Srbiji 2011 (2011; 2022); ¹SORS (2021); ²UNHCR (2012); ³Komesarijat za izbeglice (2020); ⁴Jovanović Popović *et al.* (2013); ⁵MGSI (2017))

	1991	2011	2017	2022	Index 2011/1991
1. Total inhabitants	7,498,001	7,186,862	6,871,547 ¹	6,690,887	95.8
2. Number of urban inhabitants	4,214,698	4,271,872	-	-	101.3
3. Number of refugees and internally displaced persons ²	800,000 ²	416,183 ²	201,047 ³	-	52.0
4. Total number of dwellings	2,794,648	3,231,931	-	3,628,175	115.6
4.1. Number of state-owned dwellings	468,037	41,068	-	-	8.8
4.2. Number of private dwellings	2,326,611	3,182,160	-	-	136.8
Number of residential buildings	-	2,246,320 ⁴	-	-	-
Number of ICBs	1,000,000	-	2,050,000 ⁵	-	205.0
Number of residential ICBs	-	-	995,168	-	-
5. Number of occupied dwellings (in urban settlements)	2,523,397	3,012,923	-	-	119.4
	1,398,817	1,790,542	-	-	128.0

glasnik RS, 2006), the privatization of urban construction land, and tenancy rights, have contributed to a new wave of illegal construction. ICBs have had the tacit support of all governments, although they have been considered as a criminal act since the enactment of the Act on Building of Objects (Službeni glasnik RS, 2001). ICBs are defined as a criminal act because of money laundering, fiscal evasion, trading of influence, and bribery (Službeni glasnik RS, 2014). Also, massive illegal construction indicates the unsustainable housing policy, urban governance, and planning. Key reasons for mass ICBs are the state's systemic inability to create a proper and affordable framework for meeting the housing demand, the absence of an affordable housing policy, limited and inaccessible public housing, and the intensification of housing construction under the pressure of financialization of real estate. Illegal construction has deeper roots, which urban legislation cannot successfully remove (Pajović, 2006).

The Act on Building Land (Službeni glasnik SRS, 1993a; 1993b, 1994, 1995; 1997) and the Planning and Construction Act (Službeni glasnik RS, 2003) included deep changes in the system of land disposition, such as private property on other types of building land, permission for the sale and transfer of undeveloped land use rights, and the long-term lease of state-owned land of up to 99 years, as well as policy measures for the legalization of ICBs. The Planning and Construction Act from 2009 regulated private property on construction land and the conversion of urban building land-use rights into property rights with and without fees. The fee for the conversion of agricultural land into urban construction land does not have to be paid when legalizing objects. By the amendments of the Planning and Construction Act (Službeni glasnik RS, 2014; 2015), the disputed provisions on the conversion of land use rights into the right of property (with a fee) were repealed by using a legal principle known as *lex posterior derogat priori*. Consequently, the Act on Land Conversion (Službeni glasnik RS, 2015) was adopted allowing the conversion of land use rights into property rights on construction land with a fee, mostly at a price lower than the market one. Simultaneously with applying the practices of alienating or free-of-charge

leasing public construction land to investors by direct agreement with the authorities, the process of mass IIC has been taking place. In Serbia, the process of "real-estate bubble growth" manifested itself via an increase in illegal construction, now totalling 2.05 million ICBs or 43.4% of the total buildings in 2017 (MGSI, 2017), out of which 266,655 are in Belgrade. This indicates that a significant share of the total buildings is outside the legal validity. In Serbia, residential ICBs have the dominant share (47.6%), followed by auxiliary (35.2%), industrial (11.92%) and office buildings (1.89%), while in Belgrade residential buildings dominate (76.24%), followed by residential-commercial (6.42%), and commercial buildings (5.44%) (Table 2).

In parallel with the strong institutional changes during the transition period, the uncontrolled boom of IIC has continued. Also, the evolutionary path-dependence of ICB development as an endogenously initiated phenomenon emphasizes their ability to modify. The empirical analysis of ICBs highlights: their juxtaposition and coexistence with formal construction, their share of 43.4% in the total housing stock, and unexplored economic impacts.

The key characteristics of ICBs in Serbia are related to their different forms, strong diffusion, the affiliation of actors to all income categories, formal unavailability of finances, loans and insurance of buildings, self-construction, and their *de facto* high tenure security (Zeković *et al.*, 2020). There are a few forms of ICB: construction of private ICBs in suburban areas with the expansion of urban construction areas, often with the usurpation of public construction land and public spaces; construction in the built environment by adding new floors atop existing housing buildings; construction on public surfaces of built urban zones, and construction on the land of other owners; construction in protected areas, infrastructural corridors, and rural areas; and informal construction in slums.

Our preliminary analysis of property rights in the concept of ICBs relies on the results of other empirical research in Serbia (Petovar 1992; 2003; Milić *et al.*, 2004; Mojović and Ferencak, 2011; Zeković *et al.*, 2020), indicating a relatively high or medium level of *de facto* tenure security of most

Table 2. Number and structure of ICBs in Serbia
(Source: MGSI (2017))

Category of ICBs	Serbia	Structure (%)	Belgrade	Structure (%)	Share of Belgrade (%)
Residential	975,822	47.58	203,298	76.2	20.8
Office/business	38,954	1.89	14,513	5.4	37.2
Residential-office	19,346	0.94	17,140	6.4	88.6
Commercial	17,520	0.85	4,218	1.6	24.1
Auxiliary ¹	721,941	35.20	18,057	6.8	2.5
Economic	244,573	11.92	2,323	0.9	0.9
Industrial	9,491	0.46	4,049	1.5	42.7
Infrastructure lines	1,392	0.06	0	0	0
Others	21,575	1.05	3,057	1.1	14.2
Total	2,050,614	100.0	266,655	100.0	13.0

¹ This refers to utility and other objects linked to the primary building. There is no information as to which category slums belong (MGSI, 2017).

ICBs, with a low tenure security in the slums, and that ICBs do not have access to the formal property market. About 50% of transfers of land and buildings, i.e. property rights take place in the informal market, thus contributing to the substantive importance of ICBs. Slums cannot be legalized because they are most often built on public land for special purposes – industrial zones, infrastructure corridors, plots of land where public institutions such as hospitals, educational institutions, etc. are located. Degraded buildings that can be designated as slums can be legalized, if they are located on the private land of the person who built the informal building without a permit.

Credibility of legalization policies in Serbia

The relationship between state and illegal activities (including illegal construction) has not been analysed enough in social science and in planning practice, despite its great political, economic and cultural importance (Banister *et al.*, 2015). Behind the interconnected “binary code” of the state (official legality) and illegal construction lies a complex policy of power and governance. The studies reviewed here assume that there are often covert relationships between formal government and illegal construction, such as different forms of corruption, tolerance, influence peddling, bribery, and selective prosecution in Serbia (Petovar, 2003; Grubovic, 2006; Zeković *et al.*, 2020).

Although illegal construction ruins the integrity of legal construction, it formally initiates institutional changes and state interventions (e.g., legalizing as a public interest, the creation of a legalization policy, the regulation of property rights). In order to legalize ICBs, Serbia has passed several laws, and various legalization policy measures. Based on our insight into urban plans of Belgrade and Novi Sad, and on research and empirical experience, we estimate that a combination of restrictive and co-optive legalization policy measures has been applied in Serbia: from rigorous (directives, commands, decrees, prohibitions, orders, and ordinances) to facilitative (support, formalization, prescriptions, condonation, and acceptance).

State intervention in the socialist period amounted to the policy of legalizing buildings by “fitting” them into the plans, however, it could not prevent the social, legal, and institutional causes of illegal construction. State policy interventions for preventing ICBs included many restrictive measures, especially regarding private initiatives and the different options for solving individual housing needs outside the development of socially-owned apartments. For example, approximately 26% of the illegal buildings in Belgrade were demolished after the adoption of the program of measures and actions for curbing illegal construction in the socialist period (Saveljić, 1988), although this did not become a common practice. The measures implemented against ICBs could not be effective because they did not deal with their causes.

So far, there have been no analyses of the scope and effectiveness of these intervention measures. To evaluate the credibility of legalization policy measures in both periods, all interventions have been adjusted or modified according to the CSI checklist (Ho, 2016), while the findings are summarized in Table 3. The CSI checklist covers ordaining,

prohibiting, facilitating, co-opting, and condoning, and it includes various levels of credibility depending on institutional arrangements.

In the socialist period, the users of state-owned construction land did not have any interest in offering this land to the local community, but they offered it illegally, on the “black market”, to builders who did not have land-use rights. Illegal trade in construction land use rights had collateral negative effects, due to the non-payment of sales tax and tax evasion, which left local budgets without these revenues.

Cities adopted new decisions on urban construction land in accordance with the program of mid-term construction and the program for building land development. Due to the impossibility of trade and the ban on the legal sale of construction land, ICBs could not be built or sold legally, nor could they be registered in the cadastre, land register, or fiscal system. To prevent and restrain ICBs, the Act on Vertical Enlargement and Adapting Common Rooms into Dwellings (Službeni glasnik SRS, 1984) was adopted. There had been tacit acceptance of ICBs by the authorities due to their inability to combat illegal construction and due to the insufficient institutional capacity and lack of funding for their legalization. A small number of ICBs were legalized by numerous urban plans and renovation programs. The restrictive urban planning policy was reflected in strict urban rules, with the domination of restrictive legalization measures, such as ordaining and prohibiting ICBs.

In the post-socialist period, the legalization of ICBs began with the adoption of numerous mitigation measures, the acceptance of soft and mild interventions, semi-restrictive urban policies, and urban remediation plans (Table 3). Since 1990, several laws on the legalization of ICBs have been passed in Serbia, but always with a delayed legalization deadline (Službeni glasnik RS, 1997; 2013; 2015; 2018; 2020), such as the Act on Special Conditions for Registering Property Rights on Buildings Constructed without a Building Permit (Službeni glasnik RS, 2013a), while at the Belgrade city level, the Decision on Temporary Rules and Conditions for Issuing Building Permits and Use Permits for Buildings Constructed and Reconstructed without a Building Permit was also adopted (Službeni list Grada Beograda, 2003).

From 2004 to 2015, the state implemented the Project of Real Estate Management in Serbia with the support of the World Bank and Republic Geodetic Authority. The aim of the project was improving the efficiency, transparency, availability, and reliability of the real estate management system, as well as improving the legalization of ICBs. After several attempts to legalize ICBs, a very small percentage of property was legalized (Milić *et al.* 2004; Mojović and Ferenčak, 2011). According to MGSI (2017), only 2.3% of ICBs were legalized by 2017 or 11% by 2020 (MGSI, 2020), i.e. since the 1990s, about 400,000 ICBs have been legalized.

For the legalization of ICBs, the Serbian legislation prescribed the payment of a development fee, which is 99% less than the standard value determined by local decisions (Službeni glasnik RS, 2009; 2011; 2013; 2015). According to the legalization laws (Službeni glasnik RS, 2018; 2020), legalization is free of charge, i.e. it includes a symbolic fee for ICBs that is 100-250 times less than the full development

Table 3. Matrix of legalization policy measures in Serbia
 (Source: Authors' modification according to CSI checklist (Ho, 2016), laws, Master plan of Belgrade (Službeni list Grada Beograda, 2003a; 2016), Master plan of Novi Sad (Službeni list Grada Novog Sada, 2006))

Institutional context	Type of measures				
	By decree, command	Prohibition, ban	Facilitation, mitigation	Formalization, co-opting	Acceptance, condonation
	Targeted outcome of intervention measures				
	Order	Prohibition	Facilitation	Formalization	Acceptance, integration
Socialist context (1945-1990)	Demolition programs. Prison threats. Selective prosecution. The expropriation of private properties due to building multi-story housing. The expropriation without payment for property taken (ICBs) as a threat. Payment of demolition costs from public budgets. Insufficient inspection services. Sanitary-hygienic interventions. Hard urban zoning.	Banning private construction in cities, i.e. on urban building land. Guilty status. Urban remediation program. One-off tax payment for (urban) building land. Limited access to financial sources for individual residential construction. Construction land under state control. Inefficient control system.	'Temporary' building licence. The enabling of connectivity to the utilities for ICBs. Symbolic punishments for ICBs. Sporadic establishment of legalization commissions. Financial support for some construction firms.	Binding urban plan for legalization. Settlement reconstruction program. Construction land development program. Provision of social services.	No adoption of the law on legalization of ICBs. No institutional reactions. Tacit acceptance. Low institutional capacity against ICBs.
Post-socialist context (after 1991)	ICB as a criminal act (from 2001). Sporadic punishment. Selective taxation only some ICBs (i.e. 'extra-profiters'). Some urban municipalities lost previous jurisdictions and regulatory powers due to recentralization.	Limitation of connections to utilities for ICBs. No measures to reduce different risks. Overpower of new urban renewal projects supports eviction and gentrification. The use of satellite images from 2015 as proof of the visibility of ICBs. Absence of an active control system.	Remediation urban plans for illegally constructed zones. Right of the owner (ICB) to purchase the third-party land (private or public) if built on that land. The privatization of public land on which the ICB was built is allowed. The exemptions from fee payment. Mitigating of social segregation. Support to utilities and public services. Partial construction of infrastructure.	ICBs become commodities in the real estate market and tools for income growth. Promotion of titling to achieve greater value of assets. Improvement of real estate register. Simplified registration of ICBs. Public calls for legalization. Minimal required documentation - legalization on the basis of a single document. Municipality collects all information on conditions from local institutions. Opening of legalization offices. Adaptation of the rules of regulation to the situation.	Institutional acceptance. Almost no inspection services. A symbolic legalization tax. Legalization almost free-of-charge. 'Fiscal and financial condoning'. The borrowing of municipalities for infrastructure projects (including ICBs) is allowed. Assistance given to poor owners of ICBs in the legalization process. Measures to favour of ICBs. Selective legalization in protected areas is allowed. Weak control of the implementation measures to prevent ICBs.
Preliminary estimate of the credibility of measures					
	Low, marginal	Medium, medium-low	Neutral	Medium-high	High

fee for construction land. Legalizing ICBs is based on extremely cheap policy solutions along with the insufficient readiness of institutions to complete the process. Despite the proclamation of public interest in legalizing ICBs and the free-of-charge national legalization policy, it is estimated that it has been unsuccessful and non-credible. Additionally, a less restrictive approach to legalization was applied (e.g., the review of urban and spatial plans, the establishment of temporary construction rules in the municipalities, reporting ICBs, reducing the required conditions and documents for obtaining permits, financial exemptions, and legalization fees).

There are numerous reasons for the failure of legalization policies and several reasons why ICB owners avoid them. Many of them are of a systemic nature, while some stem from individual decisions. *One of the most important motives* for avoiding legalization is that owners often do not pay the regular development fee, and it is usually paid by the person who initiates the legalization process. Citizens often ignore/avoid or do not have the money to pay this fee. *Another motive* for avoiding legalization is the existing legal decisions on legalization (e.g. the demolition of ICBs created after November 2015). From then to mid-2022, about 8,000 decisions on the demolition of ICBs were passed in Serbia;

however, it is estimated that several hundred thousand ICBs were created in that period. So, despite legalization, their number still remains around 1.9 million. One of the reasons for legalization is the difficulty in selling ICBs. Objects that are not registered in the cadastre have a reduced price compared to the market price, which significantly reduces the possibility of their sale. Another reason is that insurance companies do not insure ICBs. In addition, the owners of ICBs fear that their building will one day be demolished without compensation. The law (2018) halted the sale of ICBs undergoing legalization until the process is completed. The existing legal solutions are restrictive for the legalization of an apartment located in a joint ICB, so the owner of the apartment is charged for paying the development fee for the entire building.

The *third motive* for avoiding legalization is a relatively complicated procedure that demotivates the owners of ICBs, with usually unresolved property-legal relations. The current situation on the market shows that a significant portion of ICBs have been sold despite the legal ban on circulation. In practice, this takes place through “specific” contracts in which the transfer of ICBs is not mentioned, but rather some fictitious property between person “A” and person “B”, frequently with the payment of an incomplete purchase price. The mechanism enables the buyer to pay the agreed price for an ICB (without development fees, property tax), so the sold object remains outside the formal system. Owners of ICBs generally expect to receive basic infrastructure and services, however, without obtaining and paying for permits and connections (a gift from the other tax-payers), and often speculating for profit and other benefits.

In both periods, Serbia applied different measures against the proliferation of ICBs, or for their legalization (Table 3), without any evaluation of the efficiency and credibility level of legalization. There was also a contradiction in the synchronization between local policies of public utility enterprises and urban policy (the “unplanned and uncontrolled” development of ICBs). According to laws from the 1990s, it was prohibited to provide utility infrastructure connections to ICBs, which allowed many opportunities for corruption. In this period, we identified dominating facilitative measures such as mitigation, and the co-opting and condoning of ICBs (Table 3), while sporadic legalization was most common in practice.

The main restrictions for the legalization policy have arisen from the insufficient institutional support and absence of human resources for the formalization of ICBs, and a deficit in investment for the upgrading of utility infrastructure and social services. Most legalization measures were managed through institutional channels, such as urban planning, urban land policy, and utilities.

CONCLUSIONS

The analysis of legalization policies in Serbia shows that the credibility of the ICBs has not been made legitimate with the post-socialist reforms and housing policy, especially in view of high tenure security and property rights. The legal discrepancies of the socialist and post-socialist frames have

contributed to the emergence of ICBs as the new “second best” form of property rights. The legalization policy in Serbia is a result of inefficient, non-credible policies, different imbalances, and the relative credibility of ICBs as a systemic and social outcome, i.e. a spontaneous endogenous social and individual response. The consequences of ICBs arise from their juxtaposition and “lock-in” status, as well as from the ineffectiveness of formal institutions and weaknesses of the planning systems. All previous legalization policies had been inefficient and non-credible, and the growth ICBs continued. Moreover, it is still ongoing. Also, the lack of state capacity, credible institutions and policy options is evident (e.g., lack of personnel and institutions for legalization).

The legalization policy could be improved through identifying the priority areas for interventions in urban settlements by means of a national strategic document (Službeni glasnik RS, 2019), affordable housing policy, the improvement of social services and public infrastructure, affordable finance, better protection of property rights and human rights, land policies, introduction of the FAT framework and interventions from the CSI checklist, and adaptation of the urban planning and institutional frame in accordance with *lex ferenda*, with further independent functioning of ICBs until the establishment of a unified system of formal and codified property rights. The change in the ICBs status is quite uncertain due to the resistance of interested actors and their power. Therefore, it seems that ICBs could remain “locked” as a parallel, autonomous and “un-codified” institutional form of property rights in Serbia. The credibility approach allows further exploration of informal property rights (ICBs) and selection of potential options for their status: their formalization, demolition, punishment or abandonment – whatever is credible. To better understand transitional challenges in the domain of property rights and institutional constraints, it would be useful to combine different approaches, including qualitative research interviews.

Acknowledgements

The research presented in this paper is supported by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia (No. 451-03-68/2023-14/200006).

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